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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,285	08/05/2003	Juan C. Cendan	UF 10457-028	7082

29847 7590 01/17/2007
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EXAMINER

ADAMS, AMANDA S

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/634,285	Applicant(s) CENDAN, JUAN C.	
	Examiner Amanda Adams	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 1-6 in the reply filed on June 8, 2006, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Objections

2. Claim 3 is objected to because of the following informalities: The term "reticulated" is used in a manner inconsistent with its definition. It is thought that the term "roticulated" was meant to be used, as that is the term used in the specification. Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1 and 2** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan et al (US 2004/0087977) in view of Pietrafitta et al (US 5,355,897).

3. **Regarding claim 1**, Nolan et al disclose the method substantially as claimed including the steps of isolating the upper portion of a patient's stomach, introducing an

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anvil adapted for use with an anastomosis instrument, resecting the bowel, and connecting the resecting bowel portion and the upper stomach portion with a circular anastomosis instrument (par. 15).

4. Nolan et al fail to disclose inserting the anvil through a side region of the upper stomach portion. However, Pietrafitta et al teach that it is old and well-known in the art to percutaneously insert an anvil adapted for use with an anastomosis instrument through the stomach wall (). Percutaneous insertion such as this reduces damage to the esophagus that can be caused by the anvil. Therefore it would have been obvious to insert the anvil through a side region of the upper portion of the stomach for gastric bypass surgery.

3. **Regarding claim 2**, Nolan et al disclose isolating the upper stomach portion with a linear stapler in such a way that a protrusion is formed on a side region of the upper stomach portion (paragraph 0016).

5. **Claims 3-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Nolan et al (US 2004/0087977) in view of Pietrafitta et al (US 5,355,897) and further in view of Gannoe et al (US 2004/0092974).

4. **Regarding claims 3-5**, Nolan et al disclose the invention substantially as claimed, including that an anvil is releasable attachable to the body of the device (par. 65), but fail to disclose the following, which is taught by Pietrafitta et al:

5. Pietrafitta et al teach the insertion of a surgical instrument through an opening in a bottom region of the stomach. For the same reasons as given regarding claim 1, it

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would have been obvious to insert the anvil through the bottom region of an upper portion of the stomach.

6. Nolan in view of Pietrafitta fail to disclose the following which is taught by Gannoe et al.

7. Gannoe et al teach that it is old and well-known in the art to have a device for tissue approximation and fixation wherein the body portion of the device is flexible and capable of being reticulated (lines 1-8 of par. 60). This would allow the surgical instrument that is inserted into the opening of the bottom region of the upper portion of the stomach to be easily maneuvered into the proper position by the surgeon. Therefore it would have been obvious for the surgical instrument to be roticulatable.

8. Nolan et al further disclose that when the anvil is attached to the tip it is carried through the upper stomach portion and then passed through the bottom region of both the upper stomach and bowel portions so that an anastomosis is created by juxtaposing the upper stomach and bowel when a circular anastomosis stapling instrument is actuated (paragraph 0077).

9. **Regarding claim 6**, Nolan et al further disclose the excision and sealing of the upper stomach portion after the anvil is carried through the upper stomach portion (paragraph 0017).

Response to Arguments

10. Applicant's arguments, filed on 10/30/06 with respect to the rejection(s) of claim(s) 1-6 under 102(e) have been fully considered and are persuasive. Therefore,

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the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Nolan et al in view of Pietrafitta et al and further in view of Gannoe et al, as stated above.

11. Applicants amendments to the objections have been fully considered and those objections under 35 USC 112 have been withdrawn.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda Adams whose telephone number is (571) 272-5577. The examiner can normally be reached on M-F, 8:00am-5:00pm, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASA ASA 1/8/07


GLENN K. DAWSON
PRIMARY EXAMINER